IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Santosh S. Rao, Gopal Sharma, Poonam Dhavale

Assignee: VERITAS Operating Corporation

Title: System And Method For Resolving Cluster Partitions In Out-Of-Band Storage Virtualization Environments

Serial No.: 10/627,385 Filing Date: July 25, 2003

Examiner: Mohamed A. Wasel Group Art Unit: 2154

Docket No.: VRT0089US

Austin, Texas
May 26, 2006

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

The following Pre-Appeal Brief is submitted with the accompanying Notice of Appeal for the above identified patent application. Accompanying this Request is a one-month Petition Under 37 C.F.R. § 1.136 for Extension of Time setting a new time for response of May 27, 2006 to the Final Office Action dated January 27, 2006.

Remarks/Arguments begin on page **2** of this paper.

REMARKS

This paper is responsive to the Advisory Action dated April 24, 2006, having a one month extension response period expiring on May 27, 2006.

Claims **1-31** are pending in the application.

Claims **1-31** stand rejected.

Clear Errors In The Examiner's Rejections

In the Final Office Action, claims 1-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Frank, et al., U.S. Patent No. 6,532,494 (Frank). While not conceding any of Applicants' earlier arguments with respect to Frank, Applicants respectfully submit herein what Applicants believe to be some of the Examiner's clear errors in the above noted rejection.

As generally required by independent claim 28, independent claim 1 recites a method for

> providing a coordinator virtual device corresponding to at least a
>   portion of a physical data storage device;
> detecting when a computer system cluster, including a plurality of
>   nodes, is partitioned;
> attempting to gain control of the coordinator virtual device; and
> removing at least one of the plurality of nodes from the computer
>   system cluster when the attempting is unsuccessful.

Regarding the claimed "providing a coordinator virtual device corresponding to at least a portion of a physical data storage device," the Final Office Action dated January 27, 2006 states that Frank teaches a method for providing the coordinator virtual device through Frank's use of the cluster manager. Specifically, in the Final Office Action, at page 12, second sentence of paragraph b, the Examiner equates Frank's cluster manager with Applicants' coordinator virtual

Application No.: 10/627,385

device when the Final Office Action states that "Frank shows the use of a cluster manager, herein interpreted as a coordinator virtual device that oversees the removal and addition of nodes while considering whether or not the attempt to gain control of the coordinator virtual device is successful." Paradoxically, the Final Office Action implies that the coordinator virtual device oversees the removal and addition of nodes while considering whether an attempt to gain control of itself is successful. Regardless of this contradiction, a more serious inconsistency is apparent in the Final Office Action.

Applicants note that also in paragraph b, page 12, rather than continuing to equate Applicants' coordinator virtual device with Frank's cluster manager as previously correlated, the Final Office Action inconsistently equates Applicants' coordinator virtual device with a completely different aspect of Frank, i.e., Frank's shareable storage 22. Specifically, to show the claimed coordinator virtual device, the Final Office Action inconsistently refers to Frank, col. 3, lines 34-45, which states the following:

> Here, shareable storage 22 has been illustrated as a single storage disk or the like. It should be understood by one of ordinary skill in the art that the shareable storage may include multiple storage devices. To implement multiple storage devices as the shareable storage 22, a header 25 of each storage device may include data indicating the identity of all devices comprising the shareable storage 22, a version number for information contained in the header 25, and any other pertinent data. To gain membership in the quorumless cluster 10, a node must have access to all storage devices comprising the shareable storage 22.
>
> Frank, col. 3, lines 34-45

Applicants respectfully submit that such use of Frank is inconsistent because the Final Office Action refers to a second, separate element of Frank as equating to the claimed coordinator virtual device. This inconsistency is inappropriate as a basis for a 102 rejection

Application No.: 10/627,385

because a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (see MPEP § 2131). Although Frank is a single reference, two separate portions of Frank are used in an attempt to depict the same claim element. Further, as previously argued, neither interpretation given by the Final Office Action provides support for the 102 rejection of the Final Office Action. However, the inconsistency in the rejection is clearly erroneous and supports either reopening of prosecution on the merits or allowance of the currently pending claims.

In the Advisory Action of April 24, 2006, the Examiner makes yet another argument regarding Frank's purported teaching of the Applicants' claimed "attempting to gain control of the coordinator virtual device." Specifically, the Examiner states: "Frank discloses if a coordinator node fails to operate during an update to the cluster definition, the remaining nodes of the cluster select a new coordinator node upon loss of the coordinator node . . . ."

First, the Examiner has now identified a third possible candidate in Frank for the Applicants' claimed "coordinator virtual device," i.e., the coordinator node. As noted above, such inconsistencies among purportedly taught limitations from a reference are inappropriate for a rejection under 35 USC §102.

Second, the described operation does not in fact teach the claimed operation. Assuming for the sake of argument that Frank's failed coordinator node does equate with the claimed coordinator virtual device (and the Applicants do not concede this point), Frank does not teach or suggest "attempting to gain control" of it, or the newly selected coordinator node for that matter. Frank merely teaches that one coordinator node fails and another is selected.

Application No.: 10/627,385

CONCLUSION

For at least the reasons presented above, Applicants submit that the Examiner has failed to provide the elements required to support a prima facie rejection and Applicants respectfully submit that all claims are in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the review panel is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on May 26, 2006.

Russell C. Scott   _5/26/06_
Attorney for Applicant   Date of Signature

Respectfully submitted,

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Application No.: 10/627,385